

PROB 12B  
(7/93)FILED  
Clerk  
District Court*United States District Court*

FEB - 9 2006

for

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)*the Northern Mariana Islands***Report for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**  
*(Probation Form 49, Waiver of Hearings is Attached)*Name of Offender: **Francisco Castro Esteves.**Case **CR 97-00016-002**Name of Sentencing Judicial Officer: **Alex R. Munson**Date of Original Sentence: **November 28, 1997**Original Offense: **Conspiracy to Possess Stolen Firearms, 18 U.S.C. 924(a)(2), 922 (j), and 371.**

Original Sentence: 81 months imprisonment followed by three years of supervised release with conditions to include obey all federal, state, and local laws, not use or possess illegal controlled substances, and submit to one urinalysis test within 15 days of release from custody and to two more urinalysis tests within 60 days thereafter; participate in a program approved by the U.S. Probation Office for substance abuse which may include but not limited to random urinalysis or other testing; participate in an educational or vocational program, perform 200 hours of community service, and pay a \$100 special assessment fee. On May 12, 2004, supervised release conditions were modified to include that the defendant refrain from any use of alcohol; and perform 150 hours of community service in addition to the hours previously ordered. Community service shall be performed at the direction of the U.S. Probation Office.

Type of Supervision: **Supervised Release**Date Supervision Commenced: **May 7, 2003**Assistant U.S. Attorney: **Jamie Bowers**Defense Attorney: **F. Matthew Smith****PETITIONING THE COURT**☐

To extend the term of supervision for \_\_\_\_\_ years, for a total term of \_\_\_\_\_ years.

☒

To modify the conditions of supervision as follows:

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

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On September 2, 2005, the Ninth Circuit, in United States v. Stephens , No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Francisco Esteves' history of drug use, and the drug detection period of his drug of choice. As methamphetamine is considered one of the drugs of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Esteves' mandatory condition to set the maximum number of tests he must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

Francisco Esteves has agreed to the above modification and attached is a Probation From 49 Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with his consent.


Reviewed by:

  
ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer  
Supervision Unit Leader

Date: 2/9/06

Respectfully submitted,

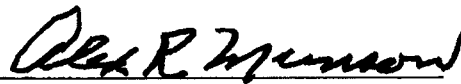
by:   
MARGARITA WONENBERG

U.S. Probation Officer

Date: 2/9/06

#### THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other



Signature of Judicial Officer

2-9-06

Date

PROB 49  
(3/89)

*United States District Court*

for

*District of Northern Mariana Islands*

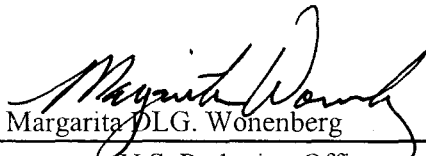
**Waiver of Hearing to Modify Conditions  
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.


I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

That the defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer;

Witness:

  
Margarita D.L.G. Wonenberg  
U.S. Probation Officer

Signed:

  
Francisco C. Esteves  
Probationer or Supervised Releasee

Jan 30, 2006  
Date